

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CLINTON BROWN,) **NO. CV 22-09203 MEMF (KS)**
)
 Plaintiff,)
)
 v.) **REPORT AND RECOMMENDATION OF**
) **UNITED STATES MAGISTRATE JUDGE**
)
 CLARK R. TAYLOR, AICP, The Los)
)
 Angeles County Department of)
)
 Regional Planning,)
)
 Defendant.)
)
 _____)

This Report and Recommendation is submitted to the Honorable Maame Ewusi-Mensah Frimpong, United States District Judge, pursuant to 28 U.S.C. § 636 and General Order No. 05-07 of the United States District Court for the Central District of California.

INTRODUCTION

On December 17, 2022, Plaintiff, a California state resident proceeding *pro se*, filed a civil rights complaint under 42 U.S.C. § 1983 (the “Complaint”) concerning the denial of Plaintiff’s application for a 20-megawatt solar farm at a property in Calabasas, California.

(Dkt. No. 1 at 3.) On January 30, 2023, Defendant filed an Answer to the Complaint. (Dkt. No. 10.)

On October 18, 2023, Defendant filed the pending Motion for Summary Judgment (“Motion”) accompanied by 10 exhibits, 10 Requests for Judicial Notice corresponding to the exhibits, and the Declaration of Jonathan Fang, Esq. (Dkt. No. 82.) On October 19, 2023, Defendant filed a Separate Statement of Uncontroverted Material Facts in support of the Motion. (Dkt. No. 84.) On December 27, 2023, Plaintiff filed an Opposition to the Motion, accompanied by an earlier-filed Statement of Genuine Disputes of Material Fact by Nonmoving Party and 11 exhibits. (Dkt. Nos. 115, 118.) On January 17, 2024, Defendant filed a Reply in support of the Motion accompanied by a Reply and Evidentiary Objections to Plaintiff’s Statement of Genuine Disputes of Material Fact by Nonmoving Party. (Dkt. No. 123.) The Motion is now fully briefed and ready for decision without oral argument. *See* Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

For the reasons outlined below, the Court recommends that Defendants’ Motion for Summary Judgment be GRANTED in full and this action dismissed with prejudice.

ALLEGATIONS IN THE COMPLAINT¹

Plaintiff sues Defendant Clark R. Taylor, a “Senior Planner” with the Los Angeles County Department of Regional Planning’s Coastal Development Services. (Dkt. No. 1 (Complaint) at 2.) Plaintiff sues Defendant in his official capacity only. (*Id.*)

¹ For ease of reference, the Court cites to the page numbers assigned by the Court’s Case Management/Electronic Case Files system appearing near the top-right corner of each page.

1 Plaintiff, who resides at 16821 Edgar Street in Pacific Palisades, alleges that he
2 “submitted an application to install a 20 MW Solar Farm at 27250 Agoura Rd., described as
3 32.4 acres of vacant land, in unincorporated Los Angeles County, on November 28, 2020, to
4 the Los Angeles County Department of Building and Safety.” (*Id.* at 2-3.) After Plaintiff was
5 directed to reapply and did so, “[t]he Los Angeles County Department of Building and Safety
6 created an Agency Referral form on 09/01/2021 for the Department of Regional Planning,
7 among other agencies to review and sign-off on the permit request.” (*Id.*) Plaintiff contends
8 that, on October 12, 2021, Defendant denied the application “on the grounds that utility-scale
9 solar facilities are not allowed in Significant Ecological Areas (“SEA”) and per the County’s
10 [Geographic Information System] mapping, the SEA overlay encompasses the entire property
11 in question.” (*Id.* at 3-4.)
12

13 Plaintiff further alleges that he continued to pursue the solar farm application through
14 different county agencies, “but all departments directed him back to the Regional Planning
15 Department . . . and the October 12, 2021, rejection letter.” (*Id.* at 4.) Finally, Plaintiff alleges
16 that an “environmental review document prepared by Green-Tech Environmental in June 2021
17 was also submitted, reviewed, and accepted by the Los Angeles County Department of Building
18 and Safety, and that document “concluded that with mitigations, the project would have less
19 than significant impacts.” (*Id.*)
20

21 Based upon those factual allegations, the Complaint raises a single cause of action
22 alleging that Defendant’s rejection of Plaintiff’s application for a solar farm constituted an
23 unconstitutional governmental taking without just compensation. (*Id.* at 5-7.) Plaintiff alleges
24 that Defendant “was acting within the scope of their authority as a government official,” that
25 Defendant “had the power to take the landowner’s property without compensation,” and that
26 because Defendant’s “actions constitute a violation of the landowner’s constitutional rights,”
27 Defendant “was acting under the color of law.” (*Id.* at 2-3.)
28

1 Plaintiff's requested relief for the alleged constitutional violation includes
 2 \$32,400,000.00 in "just compensation" and an order requiring Defendant to sign the agency
 3 referral document so the permit Plaintiff seeks for a solar farm will be approved. (*Id.* at 7.)
 4

5 THE MOTION

6
 7 Defendant seeks summary judgment on three grounds. First, Defendant contends that
 8 Plaintiff lacks standing to bring this lawsuit because he has failed to establish any ownership
 9 interest in the land at issue and has, therefore, not been injured-in-fact. (Dkt. No. 82 (Motion)
 10 at 12-16.) Second, Defendant argues that Plaintiff's Fifth Amendment Takings Clause claim
 11 fails because the property was purchased with constructive notice of the legal restrictions on
 12 the use of the land at issue, so the current owner never had the property right that Plaintiff
 13 claims was taken from him. (*Id.* at 16-22.) Third, Defendant contends that "the previous
 14 landowners in 1987 dedicated the Subject Property to allow the County of Los Angeles to
 15 prohibit residential and/or commercial structures," and therefore, "[i]f anyone has ever
 16 suffered a taking, it was the developer, who in 1987 gave up the right to develop LOT 3 in
 17 TRACT NO. 33128 (Subject Property) by the dedication of rights to the County." (*Id.* at 22-
 18 23.) Since the alleged constitutional violation occurred in 1987, Defendant argues that the
 19 two-year statute of limitations for bringing the present claim expired decades ago. (*Id.*)
 20 Defendant requests that the Court grant summary judgment in full "as Plaintiff lacks standing
 21 for his Takings claim and Plaintiff's Takings claim fails as a matter of law." (*Id.* at 24.)
 22

23 In support of the Motion, Defendant proffers a Separate Statement of Uncontroverted
 24 Material Facts (dkt. no. 84) and ten exhibits – all of which are also the subjects of Defendant's
 25 Requests for Judicial Notice:
 26
 27
 28

- 1 1. Quitclaim Grant Deed dated January 28, 2022, reflecting The Atlas LLC as grantor
2 to Steve Weera Tonasut, as trustee, recorded 02/01/2022, Los Angeles County
3 Official Record #20220123442;
4
- 5 2. Grant Deed dated Nov. 12, 2020, by Tax Deed Enterprises, LLC as grantor to The
6 Atlas LLC as grantee, dated Nov. 12, 2020, recorded 12/18/2020 Los Angeles
7 County Official Record #20201688734;
8
- 9 3. GIS-Net Public Results for 27250 Agoura Road showing corresponding APN #2064-
10 005-011 dated October 16, 2023;
11
- 12 4. Secretary of State of California, LLC Registration – Articles of Organization filed
13 08/06/2020, and; Secretary of State Statement of Information, filed Jan. 26, 2022;
14
- 15 5. Tract No. 33128, recorded on December 21, 1987, Los Angeles County Official
16 Record #87-2026009, which states in all caps, “We hereby dedicate to the County of
17 Los Angeles the right to prohibit construction of residential and/or commercial
18 structures within lot 3” in the first paragraph of the first page;
19
- 20 6. Development Agreement, recorded on March 13, 1985, Los Angeles County Official
21 Record #85-277980;
22
- 23 7. Los Angeles County Code Section 22.140.510.C.5.a, which prohibits installation of
24 solar farms within SEA, accessed on October 16, 2023;
25
- 26 8. Los Angeles County Code Section 22.52.1605.E.1 on June 25, 2018, which prohibits
27 installation of solar farms within SEA, accessed on October 16, 2023;
28

1 9. Certified Minutes of the County of Los Angeles Board of Supervisors adopting
 2 Ordinance No. 2002-0062Z on August 20, 2002, with effective date of September
 3 19, 2002, and relevant pages of the Statement of Proceedings on August 20, 2002,
 4 and Ordinance No. 2002-0062Z, and map adopted with Ordinance 2002-0062Z.
 5 Ordinance No. 2002-0062Z designates the Subject Property APN/AIN # 2064-005-
 6 011 an open space zone (See Pages 18, 50, and 57);

7
 8 10. Los Angeles County Code Section 22.16.060, which states an open space
 9 designation means that the development of premises on the Subject Property shall
 10 remain essentially unimproved and buildings, structures, grading excavation, fill or
 11 other alterations shall be prohibited except for the specified uses listed as permitted
 12 or conditionally permitted.

13
 14 (Dkt. Nos. 82-2 – 82-11.²)

15
 16 In his Opposition, Plaintiff argues that the Fifth Amendment’s Takings Clause prohibits
 17 the government “from requiring a landowner, as a land-use condition, to relinquish property
 18 rights the landowner is otherwise entitled to unless there’s a nexus and rough proportionality
 19 between the property right and the social cost of the landowner’s proposed use.” (Dkt. No.
 20 118 (Opposition) at 6-7.) He further contends that “[a] property owner acquires an irrevocable
 21 right to Just Compensation immediately upon a Taking.” (*Id.* at 8.) As “[t]he date of the
 22 subject Property’s acquisition determines the amount of Just Compensation and interest,”
 23 “there is a genuine issue of material fact that is in dispute.” (*Id.*) Plaintiff then argues that his
 24 service on Defendant was proper in response to a preliminary statement made in the Motion,
 25 but not a ground on which Defendant seeks relief here. (*Id.* at 9-12; Dkt. No. 82 at 24.) Lastly,

26
 27 ² The Court, with minor edits, uses Defendant’s description of his exhibits for the purpose of noting them here. (See Dkt.
 28 No. 82-1.) The Court describes these exhibits in further detail to the extent necessary in its analysis.

1 Plaintiff argues that he “has the Constitutional right to challenge a government-imposed
 2 restriction irrespective if that restriction was recorded before or after the acquisition of the
 3 Property in this controversy.” (Dkt. No. 118 at 13.) Plaintiff makes no argument challenging
 4 Defendant’s contention that he lacks standing to bring this suit.

5
 6 Plaintiff’s Opposition is supported by his own Statement of Genuine Disputes of
 7 Material Fact, in which he disputes all eleven of Plaintiff’s Uncontroverted Material Facts.
 8 (Dkt. No. 115.) Plaintiff further proffers the following exhibits:

- 9
- 10 1. Purchase Agreement, Loan Approval and Tax Title Certification;
- 11 2. Emails Between All Parties in Controversy Regarding Property Ownership;
- 12 3. SMMNA June 3, 2021, Implementation;
- 13 4. Plaintiff’s Emails with County Regarding Solar Project;
- 14 5. County’s Quit Claim Deeds of LOT 17 to Agoura and Calabasas;
- 15 6. County, Agoura, Calabasas, and LAFCO’s Annexation Dispute of Property;
- 16 7. FERC QF, SCE, and WDAT; PURPA Preempts Local Law;
- 17 8. Structure Mounted Solar Projects Generally Do Not Require Regional
- 18 Approval (2019);
- 19 9. LOT 3 and LOT 17 Deed of Trust Schedule of Rents Conveyed in the
- 20 Amount of \$0;
- 21 10. Title 22 Minor CUP for Open Space Development (2019 Ordinance).

22
 23 (Dkt. Nos. 115-1 – 115-11.³)

24
 25 ³ The Court uses Plaintiff’s description of his exhibits for the purpose of noting them here. (See Dkt. No. 115-1.) As stated
 26 above, the Court describes these exhibits in further detail to the extent necessary in its analysis.
 27
 28

1 Plaintiff's Opposition includes one additional exhibit – a copy of a notice from the
2 Central District of California's Bankruptcy Court rejecting a petition for filing for lack of a
3 correct filing fee. (*See* Dkt. no. 118-1.)
4

5 In the Reply, Defendant argues that Plaintiff's Opposition "contains little more than
6 hyperbole." (Dkt. No. 123 (Reply) at 2.) Defendant further contends that Plaintiff's nearly
7 complete failure to refer to his exhibits in the Opposition – exhibits which Plaintiff argues
8 support his factual assertions – amounts to the failure to direct the Court's attention to specific,
9 triable facts, as Plaintiff is required to do. (*Id.* at 2-3.) Defendant also argues that Plaintiff's
10 legal citations are largely inapposite in this case, and that Plaintiff "never presents any
11 competent evidence to dispute Defendant's simple assertions that Clinton Brown, as an
12 individual does not own '27250 Agoura Road' . . . and without ownership Brown lacks
13 standing to bring this lawsuit." (*Id.* at 3.)
14

15 Defendant next argues that Plaintiff's exhibits are all unauthenticated, as they "are not
16 supported by any affidavits, declarations, or answers to discovery" and "Plaintiff fails to
17 explain under penalty of perjury what each [] Exhibit is, what they mean, where the document
18 was obtained, and that they are true and correct copies." (*Id.* at 4.) Defendant adds that
19 Plaintiff's exhibits fail to meet the standard for taking judicial notice under Federal Rule of
20 Evidence 201(b). (*Id.*)
21

22 Defendant further contends that Plaintiff raises previously-adjudicated issues, such as
23 whether the instant Motion may be heard by the Magistrate Judge, whether service was proper,
24 and whether Defendant's affirmative defenses fail as a matter of law. (*Id.* at 5-6.)

25 Defendant then reiterates his argument that Plaintiff has no standing to bring this lawsuit
26 because he has not proffered any admissible evidence to show he owns the subject property.
27 (*Id.* at 6-7.) Defendant also contends that Plaintiff has not proffered evidence to show that he
28

1 has standing under an alternative theory, such as bringing suit as a shareholder of one of the
 2 entities who own the property. (*Id.* at 7.)

3
 4 Lastly, Defendant argues that Plaintiff fails to raise any issues of material fact in support
 5 of his Takings Clause claim because Plaintiff “provides no material fact or admissible
 6 evidence to support this conclusory statement.” (*Id.* at 8.)

7
 8 **REQUEST FOR JUDICIAL NOTICE [DKT. NO. 82-1]**

9
 10 Upon a properly supported request by a party, a federal court may take judicial notice
 11 of adjudicative facts. FED. R. EVID. 201(a), (d). Facts subject to judicial notice are those
 12 which are “(1) generally known within the trial court’s territorial jurisdiction; or (2) can be
 13 accurately and readily determined from sources whose accuracy cannot reasonably be
 14 questioned.” FED. R. EVID. 201(b).

15
 16 Citing Federal Rules of Evidence 201 and 902, Defendant requests that the Court take
 17 judicial notice of Defendant’s ten exhibits set forth above. (Dkt. No. 82-1.) Plaintiff does not
 18 object to these requests, does not dispute the authenticity or accuracy of the proffered
 19 documents, or offer any reason that the Court should not take judicial notice of them. The
 20 Court finds that Defendant’s Exhibits 1, 2, 3, 5, and 6 are properly subject to judicial notice as
 21 they are official records of the Los Angeles County Recorder’s Office or printouts from the
 22 public websites of the California Secretary of State and Los Angeles County Department of
 23 Regional Planning. (Dkt. Nos. 82-2, 82-3, 82-4, 82-6, 82-7.) As such, these exhibits and the
 24 facts therein “can be accurately and readily determined from sources whose accuracy cannot
 25 reasonably be questioned.” Fed. R. Evid. 201(b)(2); *see also Daniels-Hall v. National Educ.*
 26 *Ass’n*, 629 F.3d 992, 998 (9th Cir. 2010) (finding it appropriate to take judicial notice of
 27 information displayed publicly on two school district websites in part because the information
 28 “was made publicly available by government entities”); *see also Baldwin v. Washington*

1 *Mutual Bank, FA*, No. CV 19-01898 JAK (AGRx), 2019 WL 13252680, at *2 (C.D. Cal. Dec.
2 26, 2019) (public records maintained in the Los Angeles County Recorder’s Office were
3 judicially noticed on the ground that “their authenticity may be accurately and readily
4 determined”).

5
6 Defendant’s Exhibit 4, a copy of the California Secretary of State’s electronic filing of
7 the registration and Articles of Organization for The Atlas LLC, as well as a copy of the
8 California Secretary of State’s Statement of Information concerning The Atlas LLC (Dkt. No.
9 82-5), is also a proper subject of judicial notice as information “made publicly available by [a]
10 government entit[y].” *Daniels-Hall*, 629 F.3d at 998; Fed. R. Evid. 201(b)(2).

11
12 Defendant’s Exhibits 7, 8, and 10 are all printouts of sections of the Los Angeles County
13 Code, one of which (Exhibit 8) reflects a section of that code as it existed on June 25, 2018.
14 (Dkt. Nos. 82-8, 82-9, 82-11.) These three exhibits are also proper subjects for judicial notice,
15 as not only can their authenticity be accurately and readily determined from sources whose
16 accuracy cannot reasonably be questioned, but Defendant has provided corresponding links to
17 the complete Los Angeles County Code (Dkt. No. 82-1 at 3-4), allowing the Court to
18 affirmatively make such a determination. Fed. R. Evid. 201(b)(2); *see also AHCS – Mental*
19 *Health and Wellness Inc. v. Los Angeles County*, No. CV 21-7694-RSWL-DFMx, 2021 WL
20 6495038, at *3 (C.D. Cal. Dec. 16, 2021) (courts “may take notice of local ordinances”)
21 (citations omitted).

22
23 Lastly, Defendant’s Exhibit 9 is a copy of the Certified Minutes of the Los Angeles
24 County Board of Supervisors adopting Ordinance No. 2002-0062Z on August 20, 2002, and
25 accompanying information identifying the affected areas and lots. (Dkt. No. 82-10.) This
26 exhibit is also proper subject of judicial notice. Fed. R. Evid. 201(b)(2); *Baldwin*, 2019 WL
27 13252680, at *2.

1 **EVIDENTIARY OBJECTIONS**

2
3 Defendant raises multiple objections to Plaintiff's Exhibits. (Dkt. No. 123-2.) In ruling
4 on a motion for summary judgment, the Court may only consider admissible evidence. *See*
5 Fed. R. Civ. P. 56. A party may object that the material used to "dispute a fact cannot be
6 presented in a form that would be admissible in evidence." Fed. R. Civ. P. 56(c)(2). But, if
7 the evidence could be presented in an admissible form at trial, "then the contents may be
8 considered on summary judgment even if the evidence itself is hearsay." *Burch v. Regents of*
9 *Univ. of Cal.*, 433 F. Supp. 2d 1110, 1119-20 (E.D. Cal. 2006) (overruling objections that
10 evidence was irrelevant, speculative and/or argumentative).

11
12 A court must rule on material evidentiary objections. *Norse v. City of Santa Cruz*, 629
13 F.3d 966, 973 (9th Cir. 2010). Here, Plaintiff's exhibits 3 and 5-10 are irrelevant to the
14 pending Motion and are, therefore, inadmissible on that basis and not discussed herein. Fed.
15 R. Evid. 401. The Court finds that Plaintiff's remaining exhibits, including unauthenticated
16 email exchanges, are inadmissible hearsay not subject to any exception. Therefore, these
17 exhibits also have not been considered in ruling on this Motion. *See* Fed. Rule Evid. 801. To
18 the extent the Court refers to those exhibits, it has done so only for context in explaining
19 Plaintiff's arguments. In all other respects, in resolving Defendant's Motion, where this
20 Report and Recommendation cites evidence to which a party has objected, the objection is
21 impliedly overruled. The Court denies as moot objections to any evidence on which it did not
22 rely.

23
24 **FACTS FOR WHICH THERE IS NO GENUINE DISPUTE**

25
26 The property that is the subject of this lawsuit is 27250 Agoura Road, an unincorporated
27 parcel of land whose Assessor Parcel Number APN is 2064-005-011, described as "LOT 3 in
28 TRACT NO. 33128" (the "Subject Property"). (Defendant's Statement of Uncontroverted

1 Facts (“SUF”) No. 1 (Dkt. No. 84 at 2).) On December 22, 1987, the County of Los Angeles
2 approved the map of Tract No. 33128. (Defendant’s SUF No. 4 (Dkt. No. 84 at 3); Defendant’s
3 Ex. 5 (Dkt. No. 82-6).) The County of Los Angeles concurrently accepted a dedication from
4 the prior landowners of the Subject Property that included “the right to prohibit the construction
5 of residential and/or commercial structures within Lot 3.” (Defendant’s SUF No. 4;
6 Defendant’s Ex. 5 (Dkt. No. 82-6 at 2).) This restriction is recorded on the official Tract Map
7 33128 in Book 1099, Pages 94 TO 97, through the Los Angeles County Official Record No.
8 87-2026009. (Defendant’s SUF No. 4 (Dkt. No. 84 at 3).) The dedication of the Subject
9 Property was made pursuant a development agreement dated November 29, 1984, between the
10 prior landowners of the Subject Property and the County of Los Angeles. (Defendant’s SUF
11 No. 5 (Dkt. No. 84 at 3-4); Defendant’s Ex. 6 (Dkt. No. 82-7).)
12

13 On August 20, 2002, the County of Los Angeles designated the Subject Property through
14 APN 2064-005-011 as an Open Space (“Zone O-S”) in Ordinance No. 2002-0062Z.
15 (Defendant’s SUF No. 6 (Dkt. No. 84 at 4); Defendant’s Ex. 3 (Dkt. No. 82-4); Defendant’s
16 Ex. 9 (Dkt. No. 82-10 at 18, 57).) Premises in Zone O-S “shall remain essentially unimproved
17 and buildings, structures, grading excavation, fill or other alterations shall be prohibited except
18 for the specified uses listed as permitted or conditionally permitted in Section 22.16.030.C (Use
19 Regulations).” (Defendant’s SUF No. 7 (Dkt. No. 84 at 4); Defendant’s Ex. 10 (Dkt. No. 82-
20 11)); *see also* Los Angeles County Code § 22.16.060(A) (2024). As of October 16, 2023, the
21 Subject Property was still designated as Zone O-S. (Defendant’s Ex. 3 (Dkt. No. 82-4).)
22

23 On December 13, 2016, the County of Los Angeles adopted an ordinance amending
24 Title 22 of the Los Angeles County Code to *inter alia* establish or amend requirements for
25 small-scale solar energy systems and utility-scale solar energy facilities. (Defendant’s SUF
26 No. 9 (Dkt. No. 84 at 5); Defendant’s Ex. 8 (Dkt. No. 82-9).) That ordinance, in pertinent part,
27 prohibits “[g]round-mounted utility-scale solar energy facilities within adopted Significant
28

1 Ecological Areas designated in the General Plan” (*Id.*); *see also* Los Angeles County
2 Code § 22.140.510(C)(5)(a) (2024).

3
4 On November 12, 2020, the Subject Property was granted to The Atlas LLC, a California
5 Limited Liability Company. (Defendant’s SUF Nos. 8, 10 (Dkt. No. 84 at 4-6); Defendant’s
6 Ex. 2 (Dkt. No. 82-3); Defendant’s Ex. 4 (Dkt. No. 82-5).)

7
8 On September 1, 2021, Plaintiff submitted an application and supporting materials to
9 Defendant Los Angeles County Department of Regional Planning for a solar farm project.⁴
10 (Dkt. No. 42 at 4.) On October 12, 2021, Defendant rejected the application and stated the
11 following:

12
13 Ground mounted utility scale solar facilities are not permitted in
14 Significant Ecological Areas as described in section 22.140.510(C)(5)(a)
15 found here: [https://library.municode.com/ca/los angeles county/codes/code of](https://library.municode.com/ca/los%20angeles%20county/codes/code%20of%20ordinances?nodeId=TIT22PLZO_DIV7STSPUS_CH22.140STSPUS_22.140.510REEN)
16 [ordinances?nodeId=TIT22PLZO DIV7STSPUS CH22.140STSPUS](https://library.municode.com/ca/los%20angeles%20county/codes/code%20of%20ordinances?nodeId=TIT22PLZO_DIV7STSPUS_CH22.140STSPUS_22.140.510REEN)
17 [22.140.510REEN](https://library.municode.com/ca/los%20angeles%20county/codes/code%20of%20ordinances?nodeId=TIT22PLZO_DIV7STSPUS_CH22.140STSPUS_22.140.510REEN). The proposed project site is located wholly within the
18 Santa Monica Mountains North Area Significant Ecological Area and for this
19 reason, the proposed project cannot be permitted at this location and the
20 application cannot be processed.

21
22 (*Id.*)

23
24
25 ⁴ Plaintiff sues Defendant Taylor in his official capacity as a senior planner employed by the Los Angeles County
26 Department of Regional Planning. (Dkt. No. 1 at 2.) In light of the fact that an “official capacity suit is, in all respects
27 other than name, to be treated as a suit against the entity” and not against the official personally, *Kentucky v. Graham*, 473
28 U.S. 159, 166 (1985), the Court refers to the Los Angeles County Department of Regional Planning as the Defendant in
this case.

1 On January 28, 2022, The Atlas LLC transferred “an undivided 15% interest” in the
2 Subject Property to Steve Weera Tonasut, Trustee of the Tonasut Family Trust dated June 14,
3 2004.” (Defendant’s Ex. 1.) In that grant deed, Plaintiff signed on behalf of “Atlas, LLC,” as
4 a “member.” (*Id.*)

5 6 LEGAL STANDARD 7

8 Summary judgment is appropriate if the evidence, viewed in the light most favorable to
9 the nonmoving party, demonstrates that there is no genuine issue of material fact and that the
10 moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The moving
11 party bears the initial burden of offering proof of the absence of any genuine issue of material
12 fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the moving party’s burden is
13 met, the opposing party is required to go beyond the pleadings and, by the party’s own
14 affidavits or by other evidence, designate “specific facts showing that there is a genuine issue
15 for trial.” Fed. R. Civ. P. 56(e); *Miller v. Glenn Miller Prods., Inc.*, 454 F.3d 975, 987 (9th
16 Cir. 2006). The party opposing the motion must submit evidence sufficient to establish the
17 elements that are essential to that party’s case, and for which that party will bear the burden
18 of proof at trial. *Celotex Corp.*, 477 U.S. at 322.

19
20 The Court must “view the facts in the light most favorable to the non-moving party and
21 draw reasonable inferences in favor of that party.” *Scheuring v. Traylor Bros., Inc.*, 476 F.3d
22 781, 784 (9th Cir. 2007). Where different ultimate inferences reasonably can be drawn,
23 summary judgment is inappropriate. *Miller*, 454 F.3d at 988. At summary judgment, “the
24 court does not make credibility determinations or weigh conflicting evidence.” *Porter*, 419
25 F.3d at 891 (citation omitted). A factual dispute is “genuine” only if there is a sufficient
26 evidentiary basis upon which a reasonable jury could return a verdict for the nonmoving party.
27 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual dispute is “material”
28 only if it might affect the outcome of the lawsuit under governing law. *Id.*

1 “Evidence may be offered to support or dispute a fact on summary judgment only if it
2 could be presented in an admissible form at trial.” *S. Cal. Darts Ass’n v. Zaffina*, 762 F.3d 921,
3 925-26 (9th Cir. 2014) (citation and internal quotation marks omitted); *see also Fonseca v.*
4 *Sysco Food Servs. of Ariz., Inc.*, 374 F.3d 840, 846 (9th Cir. 2004) (“Even the declarations that
5 do contain hearsay are admissible for summary judgment purposes because they ‘could be
6 presented in an admissible form at trial.’”) (citations omitted). Purported evidence which “sets
7 out mere speculation for the critical facts, without a showing of foundation in personal
8 knowledge[] for the facts claimed to be at issue” is insufficient. *John M. Floyd & Assocs.*, 550
9 F. App’x at 360 (9th Cir. 2013). Conclusory statements are insufficient to defeat summary
10 judgment. *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936,
11 950 n.9 (9th Cir. 2011) (*en banc*).

12
13 To establish the existence of a factual dispute, an opposing party need not establish an
14 issue of fact conclusively in its favor; it is enough that “the claimed factual dispute be shown
15 to require a jury or judge to resolve the parties’ differing versions of the truth at trial.” *First*
16 *Nat’l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 290 (1968). Thus, the “purpose of
17 summary judgment is to ‘pierce the pleadings and to assess the proof in order to see whether
18 there is a genuine need for trial.’” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475
19 U.S. 574, 587 (*quoting* Fed. R. Civ. P. 56(e) advisory committee’s note on 1963 amendments);
20 *Int’l Union of Bricklayers v. Martin Jaska, Inc.*, 752 F.2d 1401, 1405 (9th Cir. 1985).

21 22 **DISCUSSION**

23 **I. Standing**

24 25 **a. Legal Standard**

26
27 The judicial power of federal courts only extends to “cases” or “controversies.” *Nasby*
28 *v. Nevada*, 79 F.4th 1052, 1056 (9th Cir. 2023) (*citing* U.S. Const. art. III, § 2, cl. 1). A “critical

1 component of the case-or-controversy requirement is standing.” *Id.* To establish
2 constitutional (Article III) standing,⁵ a plaintiff must suffer an “injury in fact,” which is the
3 “invasion of a legally protected interest [that] is (a) concrete and particularized and (b) actual
4 or imminent, not conjectural or hypothetical.” *Id.* (quoting *Lujan v. Defs. of Wildlife*, 504 U.S.
5 555, 560 (1992)). The party invoking federal jurisdiction bears the burden of establishing
6 standing. *Id.*

7
8 **b. Relevant Facts**

9
10 As stated above, the parties to this action are only Plaintiff Brown and Defendant Taylor
11 in his official capacity with the Los Angeles County Department of Regional Planning. (Dkt.
12 No. 1 at 2.) The Subject Property is currently owned by The Atlas LLC, a California Limited
13 Liability Company, and Steve Weera Tonasut, Trustee of the Tonasut Family Trust.
14 (Defendant’s Exs. 1, 2, 4.)

15
16 In The Atlas LLC’s Articles of Organization on file with the California Secretary of
17 State, Plaintiff is designated as the sole member, the agent for service of process, and the Chief
18 Executive Officer. (Defendant’s Ex. 4.)

19
20 In Plaintiff’s Exhibit P1, Plaintiff proffers a receipt documenting a \$10,000 wire transfer
21 on July 6, 2020, concerning the Subject Property. (Dkt. No. 115-2.) That document reflects
22 the “buyer” as Plaintiff Clinton Brown. (*Id.* at 1.) The same exhibit includes an email in which
23 Plaintiff requests “the purchase agreement that was used in Escrow” in a transaction involving
24 the Subject Property. (*Id.* at 2.) Additionally, the same exhibit also includes a copy of a
25 “Disclosure Regarding Real Estate Agency Relationship” which identifies Plaintiff Clinton

26
27 ⁵ There are two doctrines governing whether a plaintiff has standing to proceed in federal court – namely (1) Article III
28 or “constitutional standing” and (2) “prudential standing.” *Potere v. Board of Trustees of State Bar of California*, No.
2:21-cv-05208-JAK-JC, – it appears that only plaintiff’s Article III standing is at issue in the Motion.

1 Brown as both the buyer and buyer's agent. (*Id.* at 3-23.) That exhibit also includes a letter of
2 "Conditional Loan Approval" dated June 22, 2020, in which the name "Clinton Brown" was
3 handwritten in next to "Potential Borrower." (*Id.* at 24.)
4

5 Finally, the exhibit includes a copy of a "Foreclosure Due process Certification" dated
6 January 25, 2021, for the Subject Property. (*Id.* at 25.) Plaintiff's Exhibit P7 includes a copy
7 of a "Voluntary Consent to Release Non-Public Information," which purports to contain
8 Plaintiff's digital signature and title as "Managing Director" of The Atlas, LLC. (Dkt. No. 115-
9 8 at 2.) On January 28, 2022, The Atlas LLC transferred "an undivided 15% interest" in the
10 Subject Property to Steve Weera Tonasut, Trustee of the Tonasut Family Trust dated June 14,
11 2004." (Defendant's Ex. 1.) In that grant deed, Plaintiff signed on behalf of "Atlas, LLC," as
12 a "member." (*Id.*)
13

14 **c. The Parties' Arguments**

15

16 Defendant contends that Plaintiff has failed to allege or show any individualized injury-
17 in-fact, as he does not personally own the Subject Property, and that Plaintiff has failed to
18 proffer evidence to show he is authorized to bring suit on behalf of the owners of the Subject
19 property, including The Atlas LLC, in Plaintiff's capacity as a member. (Dkt. No. 82 at 12-
20 16.) Defendant argues that, as a result, Plaintiff lacks standing to bring suit concerning the use
21 of the Subject Property, regardless of whether the suit is considered direct or derivative. (*Id.*)
22

23 Plaintiff does not address this issue in his Opposition. (Dkt. No. 118.) However, in
24 Plaintiff's Statement of Genuine Disputes of Material Fact, he disputes Defendant's SUF No.
25 1, that he does not own the Subject Property. (Dkt. No. 115 at 2.) In doing so, Plaintiff cites
26 to Plaintiff's Exhibit P1, as well as Plaintiff's Exhibit 2, copies of email exchanges between
27 Plaintiff, Steve Weera Tonasut, and another individual in January, August, and November
28 2022, concerning the deal in which Tonasut received a 15% ownership in the Subject Property,

1 and further discussion/disputes over how to further use and subdivide the property. (Dkt. Nos.
2 115-2, 115-3.)

3
4 Plaintiff also cites an order issued by the District Judge in this case on December 5,
5 2023, denying Plaintiff's Motion for Preliminary Injunction and Request for Judicial Notice.
6 (Dkt. No. 105.) Plaintiff specifically points to a footnote in that order that states, "The Agoura
7 Property is at the center of another lawsuit by Brown against his alleged business partners in
8 the proposed solar farm. *Clinton Brown v. Emil Assentato, et al*, Case No. 2:23-cv-02972-
9 MEMF-KS." (*Id.* at 2 n.4; Dkt. No. 115 at 2.) Additionally, Plaintiff cites Plaintiff's Exhibit
10 P3, a printout of a page on the Los Angeles County Department of Regional Planning's website
11 entitled, "Santa Monica Mountains North Area Plan." (Dkt. No. 115 at 2-3; Dkt. No. 115-4.)
12 Plaintiff then cites the rejection letter for the solar farm (Dkt. No. 42 at 2) and argues, "Nowhere
13 in the Santa Monica Mountains North Area 'Final Document' does it prohibit solar farms."
14 (Dkt. No. 115 at 3.)

15
16 Next, Plaintiff cites to Plaintiff's Exhibit P4, which are unauthenticated copies of email
17 exchanges between Plaintiff and representatives of several Los Angeles County agencies,
18 Defendant included, between November 2020 and December 2022. (Dkt. No. 115-5.) In
19 reference to Plaintiff's Exhibit 4, Plaintiff argues that "[t]his LLC was not created for the
20 purpose of acquiring the 32.4 acres in unincorporated Los Angeles County" but instead to
21 "open a bar at 21201 Pacific Coast Hwy, Malibu, CA 90272." (Dkt. No. 115 at 3.) Plaintiff
22 further argues, "[I]t is disputable whether the entity is a disregarded or partnership entity," and
23 adds that he has "pierced the corporate veil" which in all fairness and justice must be set aside
24 to prevent fraud and ensure equity."⁶ (Dkt. No. 115 at 3.)

25
26 ⁶ Plaintiff provides a link to a page of the Internal Revenue Service's website discussing limited liability companies. (Dkt.
27 No. 115 at 3.) The relevant language provides: "A Limited Liability Company (LLC) is an entity created by state statute.
28 Depending on elections made by the LLC and the number of members, the IRS will treat an LLC either as a corporation,
partnership, or as part of the owner's tax return (a "disregarded entity"). A domestic LLC with at least two members is
classified as a partnership for federal income tax purposes unless it files Form 8832 and elects to be treated as a corporation.

1 Plaintiff also disputes Defendant's SUF No. 2, which reflects that The Atlas LLC and
2 Steve Weera Tonasut (as Trustee of the Tonasut Family Trust) currently own the Subject
3 Property. (Dkt. No. 115 at 3.) Here too, Plaintiff cites to Plaintiff's Exhibits 1 and 4, discussed
4 above. (*Id.* at 4.) Plaintiff also cites to a portion of an earlier pleading in this case, specifically,
5 Defendant's reply in support of a motion to compel. (*Id.*; Dkt. No. 91.) Plaintiff appears to be
6 referring to language in that reply stating, "Defendant does not have access to documents
7 related to [Plaintiff's] purchase and acquisition of the subject property," (Dkt. No. 91 at
8 4.) Plaintiff argues, "If the Government doesn't know who the legal landowner is, it's
9 indisputable that the public record itself is a material dispute requiring a jury's resolution."
10 (Dkt. No. 115 at 4.)

11
12 Plaintiff further disputes Defendant's SUF No. 3, which states that on October 12, 2021,
13 the date Plaintiff's solar farm application was denied, the Subject Property was owned solely
14 by The Atlas LLC. (*Id.*) Plaintiff again cites to Plaintiff's Exhibits 2 and 4, and poses the
15 question, "Who was the owner on November 30, 2020, when application
16 UNCSOLR201128002452 was submitted to the County?" (*Id.*)

17 18 **d. Discussion**

19
20 The Court begins with the direct evidence showing ownership of the Subject Property.
21 Defendant has proffered ample admissible evidence – specifically, copies of the relevant grant
22 deeds – showing that the Subject Property in this case is currently owned by The Atlas LLC
23 and Steve Weera Tonasut, Trustee of the Tonasut Family Trust. (Defendant's Exs. 1&2.)

24
25

For income tax purposes, an LLC with only one member is treated as an entity disregarded as separate from its owner,
26 unless it files Form 8832 and affirmatively elects to be treated as a corporation. However, for purposes of employment tax
27 and certain excise taxes, an LLC with only one member is still considered a separate entity. . . . If a single-member LLC
28 does not elect to be treated as a corporation, the LLC is a 'disregarded entity,' and the LLC's activities should be reflected
on its owner's federal tax return." *Available at:* <https://www.irs.gov/businesses/small-businesses-self-employed/single-member-limited-liability-companies> (last accessed on May 10, 2024).

1 Plaintiff has not proffered any admissible evidence that plausibly challenges the accuracy of
2 the grant deeds. Indeed, the documents that Plaintiff relies upon to establish his purported
3 ownership of the property are all inadmissible hearsay for which Plaintiff has not established
4 that any exception will apply. *See* F.R.E. 801. Accordingly, the Court finds as a factual matter
5 that the Subject Property is owned by The Atlas LLC and Tonasut. Put another way, because
6 Plaintiff fails to establish that he owns the Subject Property in an individual capacity, he has
7 not met his burden to establish an injury-in-fact based on individual ownership of the Subject
8 Property. *Nasby*, 79 F.4th at 1056.

9
10 However, as noted above, it is undisputed, based upon Defendant's admissible evidence,
11 that The Atlas LLC is the majority owner of the Subject Property, and the record establishes
12 that Plaintiff is the CEO and sole member of that company. (Defendant's Exs. 1, 2, 4.)
13 Defendant contends that Plaintiff's position as a member of The Atlas LLC does not confer
14 standing because members of corporations and limited liability companies generally do not
15 have standing to bring direct suits for generalized harms to a company. (Dkt. No. 82 at 12-16.)
16 However, "the same conduct" may result in injury to both the entity and the individual. *RK*
17 *Ventures, Inc. v. City of Seattle*, 307 F.3d 1045, 1057 (9th Cir. 2002). The authority Defendant
18 relies on applies to situations in which members or shareholders attempt to bring suit when
19 they are unable to establish any direct, individual injury. *See Gordon v. Virtumundo, Inc.*, 575
20 F.3d 1040, 1055 (9th Cir. 2009) (the individual plaintiff "failed to argue, let alone come forth
21 with evidence[] that[] . . . he has suffered any real harm" based on his company's receipt of
22 thousands of spam emails from the defendant); *Erlich v. Glasner*, 418 F.2d 226, 227 (9th Cir.
23 1969) ("It is clear that the claimed damages were suffered by the corporation, rather than by
24 appellant."); *PacLink Communications Intern., Inc. v. Superior Court*, 90 Cal. App. 4th 958,
25 964 (Cal. Ct. App. 2001) (where multiple members of a limited liability company filed suit as
26 individuals, the court found that the "members cannot be directly injured when the company is
27 improperly deprived of [] assets" because "[t]he injury was essentially a diminution in the value
28 of their membership interest in the LLC . . .").

1 Here, Plaintiff brings a civil rights Complaint under 42 U.S.C. § 1983 on his own behalf,
2 not that of The Atlas LLC. More specifically, Plaintiff alleges that the denial of his solar farm
3 application by Defendant amounted to a taking *from him*. (Dkt. No. 1.) The admissible
4 evidence in this case establishes that Plaintiff is the *sole* member of The Atlas LLC, not one of
5 many members or shareholders who may only suffer a generalized harm from an injury to the
6 company as a whole. (Defendant's Ex. 4.) Therefore, the evidence establishes that the harm
7 alleged in this case is more properly characterized as an injury to both The Atlas LLC and
8 Plaintiff, as its sole member. *RK Ventures, Inc.*, 307 F.3d at 1057. As a party claiming he was
9 injured-in-fact as the sole member of The Atlas LLC, Plaintiff has standing to bring suit.
10 *Nasby*, 79 F.4th at 1056.

11
12 The Court also notes there is no evidence to suggest that Plaintiff seeks to improperly
13 use The Atlas LLC as a shield in this lawsuit. Whatever business reason Plaintiff elected to
14 acquire the Subject Property through his limited liability company instead of purchasing it
15 individually, it is undisputed that Plaintiff is the sole member of The Atlas LLC and the
16 applicant for the construction of a solar farm on the Subject Property. (Defendant's Exs. 1, 2,
17 4; Dkt. No. 42.) The Court concludes that the harm alleged in this case has been sufficiently
18 established as harm to Plaintiff himself. (Dkt. No. 1; Defendant's Ex. 4.) Consequently, the
19 Court finds that Plaintiff has proffered evidence sufficient to defeat summary judgment with
20 respect to Plaintiff's standing to bring suit in this case. *Nasby*, 79 F.4th at 1056.

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1 **II. The Takings Clause**

2
3 **a. The Parties’ Arguments**

4
5 As noted above, Plaintiff alleges in the Complaint that Defendant Los Angeles County
6 Department of Regional Planning’s October 12, 2021 rejection of his solar farm application
7 violated the Takings Clause of the Fifth Amendment. (Dkt. No. 1 at 4-7; *see also* Dkt. No. 42
8 at 3-4.) Plaintiff brings his Takings Clause claim under the theory that “when a regulation
9 impedes the use of property without depriving the owner of all economically beneficial use,” a
10 taking may still occur depending upon “(1) the economic impact of the regulation on the
11 claimant; (2) the extent to which the regulation has interfered with distinct investment-backed
12 expectations; and (3) the character of the governmental action.” (Dkt. No. 1 at 5-6 (citation
13 omitted).) Plaintiff argues that he “proceeded in good faith and with great expense to work
14 with the Los Angeles County Department of Building and Safety to secure a permit to use the
15 property for its highest and best use,” and that the denial of his solar farm application “[w]ithout
16 just compensation,” amounts to “unjustly taking away the property owner’s rights and
17 destroying their ability to plan their own future.” (*Id.* at 5.) Plaintiff adds that “[a] regulation
18 which denies all economically beneficial or productive use of land requires compensation under
19 the Takings Clause.” (*Id.*)

20
21 In the Motion, Defendant first argues that Plaintiff has “failed to allege or provide any
22 facts related to a diminution of value of the Subject Property.” (Dkt. No. 82 at 18.) In the
23 absence of evidence showing a reduction in current value, Defendant reasons that to the extent
24 any taking occurred, it would have been before Plaintiff purchased his property because – as
25 Defendant’s exhibits establish – the regulatory restrictions on that property were imposed years
26 prior. (*Id.*)

1 In a related argument, Defendant also contends that Plaintiff purchased the Subject
2 Property with constructive notice of the regulatory restrictions to the property, which included
3 the prohibition of a solar farm, so Plaintiff never possessed a cognizable property right to build
4 any residential or commercial structures. (*Id.* at 19-22.)
5

6 In the Opposition, Plaintiff makes a number of generalized statements about the law of
7 takings (in his view), and then argues that “[t]he date of the [S]ubject Property’s acquisition
8 determines the amount of Just Compensation and interest. Thus, there is a genuine issue of
9 material fact that is in dispute.” (Dkt. No. 118 at 8.) Plaintiff further argues that he “has the
10 Constitutional right to challenge a government-imposed restriction irrespective [of] if that
11 restriction was recorded before or after the acquisition of the Property in this controversy.”
12 (*Id.* at 13.)
13

14 In the Reply, Defendant contends that Plaintiff has not adequately responded to
15 arguments made in the Motion, and that he “fails to raise genuine issues of material fact that
16 there was no regulatory taking because he fails to include any evidence supporting his claims
17 beyond conclusory, unsupported assertions.” (Dkt. no. 123 at 8-11.)
18

19 **b. Legal Standard**

20

21 The Fifth Amendment’s Takings Clause provides: “nor shall private property be taken
22 for public use, without just compensation.” *Sheetz v. County of El Dorado, California*, ____
23 U.S. ___, 144 S. Ct. 893, 899 (2024). As the Supreme Court recently held:
24

25 The Takings Clause’s right to just compensation coexists with the States’
26 police power to engage in land-use planning. (Though at times the two seem
27 more like in-laws than soulmates.) While States have substantial authority to
28 regulate land use, the right to compensation is triggered if they “physically

1 appropriat[e]” property or otherwise interfere with the owner’s right to
2 exclude others from it. That sort of intrusion on property rights is a *per se*
3 taking.

4
5 *Id.* (citations omitted).

6
7 However, “[d]ifferent rules apply to State laws that merely restrict how land is used.”
8 *Id.* Judicial decisions considering regulatory takings claims are typically “characterized by
9 essentially ad hoc, factual inquiries, designed to allow careful examination and weighing of all
10 the relevant circumstances.” *Colony Cove Properties, LLC v. City of Carson*, 888 F.3d 445,
11 450 (9th Cir. 2018) (quoting *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg’l Planning Agency*,
12 535 U.S. 302 (2002)). The goal is to determine whether regulatory actions “are functionally
13 equivalent to the classic taking in which government directly appropriates private property.”
14 *Id.* (citation omitted).

15
16 In *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104 (1978), the Supreme Court
17 articulated three factors that frame a regulatory takings analysis. *Colony Cove Properties, LLC*,
18 888 F.3d at 450. Specifically, “*Penn Central* instructs us to consider [1] the regulation’s
19 economic impact on the claimant, [2] the extent to which the regulation interferes with distinct
20 investment-backed expectations, and [3] the character of the government action.” *Colony Cove*
21 *Properties, LLC*, 888 F.3d at 450 (citation and internal quotation marks omitted); *see also Penn*
22 *Centr. Transp. Co.*, 438 U.S. at 124. “Primary among those factors are [t]he economic impact
23 of the regulation on the claimant and, particularly, the extent to which the regulation has
24 interfered with distinct investment-backed expectations.” *MHC Financing Ltd. Partnership v.*
25 *City of San Rafael*, 714 F.3d 1118, 1127 (9th Cir. 2013) (quoting *Lingle v. Chevron U.S.A. Inc.*,
26 544 U.S. 528, 538-39 (2005)). The ultimate question is whether a plaintiff presents sufficient
27 evidence on each of these factors to allow a reasonable finder of fact to conclude that the
28 government’s application of the regulation was “the functional equivalent of the direct

1 appropriation of the [p]roperty.” *Colony Cove Properties, LLC*, 888 F.3d at 450. The Court
2 address each factor in turn. *Id.*

3
4 **c. Analysis**

5
6 **1. Economic Impact**

7
8 “In considering the economic impact of an alleged taking, we ‘compare the value that
9 has been taken from the property with the value that remains in the property.’” *Id.* (quoting
10 *Keystone Bituminous Coal Ass’n v. DeBenedictis*, 480 U.S. 470, 497 (1987)). “[E]conomic
11 impact is determined by comparing the total value of the affected property before and after the
12 government action.” *Id.* (citing *MHC Financing Ltd. Partnership*, 714 F.3d at 1127).
13 “Projected income streams can contribute to a method for determining the post-deprivation
14 value of property, but the severity of the loss can be determined only by comparing the post-
15 deprivation value to pre-deprivation value.” *Id.* Most importantly, however, conclusory
16 statements are insufficient to defeat summary judgment. *Comite de Jornaleros de Redondo*
17 *Beach*, 657 F.3d at 950 n.9.

18
19 Here, Plaintiff has not proffered any evidence of post-deprivation value of the Subject
20 Property. Indeed, Plaintiff has not even *alleged* a loss of value. Furthermore, even if he had
21 alleged any economic loss, to defeat summary judgment, Plaintiff must present admissible
22 evidence of the nature and quantum of such loss, and he has not done. *S. Cal. Darts Ass’n*, 762
23 F.3d at 925-26.

24
25 Indeed, at the summary judgment stage, Plaintiff must show what, if any, *diminution* in
26 value has occurred based on the regulatory action taken. *Comite de Jornaleros de Redondo*
27 *Beach*, 657 F.3d at 950 n.9. Even if The Atlas LLC paid for the property, *Colony Cove*
28 *Properties, LLC*, 888 F.3d at 451, Plaintiff has presented is no valuation evidence in this case,

1 admissible or otherwise, as the relevant November 2020 grant deed does not reflect a value for
2 the property. (Defendant’s Ex. 2.) Regardless, Plaintiff has “presented no evidence, by virtue
3 of analyzing diminished income streams or otherwise, of the post-deprivation value of the
4 Property.” *Colony Cove Properties, LLC*, 888 F.3d at 451; *see also Penn Cent. Transp. Co.*,
5 438 U.S. at 130 (a party’s attempt to “establish a ‘taking’ simply by showing that they have
6 been denied the ability to exploit a property interest that they heretofore had believed was
7 available for development is quite simply untenable.”).

8
9 As a result, with respect to the first *Penn Central* prong, Plaintiff fails to present any
10 evidence to create a triable question of fact as to any economic impact caused by Defendant’s
11 denial of his solar farm application. *Id.* at 452.

12 13 **2. Distinct Investment-Backed Expectations**

14
15 Despite Plaintiff’s failure to establish his future economic expectations for the Subject
16 property, it is not unreasonable to infer that he had a certain expectation of income based on
17 the installation of a solar facility. But he neither makes this argument nor presents any
18 admissible evidence in support thereof. The record here is devoid of any evidence to support
19 such a theory.

20
21 “To form the basis for a taking claim, a purported distinct investment-backed
22 expectation must be objectively reasonable.” *Id.* at 452. On this issue, Defendant’s evidence,
23 which has not been rebutted in any way by Plaintiff’s evidence, eliminates any potential
24 genuine issues of material fact. Specifically, Defendant has proffered ample admissible
25 evidence showing that specific government-imposed restrictions against development on the
26 Subject Property that led to the denial of Plaintiff’s solar farm application have been in place
27 since 1987. (Defendant’s SUF Nos. 4-9; Defendant’s Exs. 3, 5&6, 8-10.) The relevant
28 restrictions were recorded on the official Tract Map 33128 in Book 1099, Pages 94 TO 97,

1 through the Los Angeles County Official Record No. 87-2026009. (Defendant’s SUF No. 4);
2 *see also* Los Angeles County Code § 22.16.060(A) (2024). As stated above, the Subject
3 Property was granted to The Atlas LLC on November 12, 2020, after the restrictions at issue
4 were imposed. (Defendant’s SUF Nos. 8, 10; Defendant’s Ex. 2; Defendant’s Ex. 4.)
5

6 Whether or not Plaintiff had economic expectations for the Subject Property— a fact he
7 has neither pled nor proffered any evidence to prove— the undisputed evidence established
8 that he has never, during the time The Atlas LLC has owned the Subject property, been
9 permitted by law to develop that property for purposes of a solar farm. (Defendant’s SUF Nos.
10 4-9; Defendant’s Exs. 3, 5&6, 8-10.) On this point, Defendant’s exhibits have accomplished
11 precisely what is required at the summary judgment stage, i.e., piercing the pleadings so the
12 Court may assess the proof in order to see whether there is a genuine need for trial. *Matsushita*
13 *Elec. Indus. Co.*, 475 U.S. at 587. Moreover, Plaintiff’s arguments disputing whether the
14 County of Los Angeles is correct in its assessment of the designation of the Subject Property
15 does not advance his argument that a constitutional taking occurred here. Plaintiff has failed
16 to present evidence supporting any investment-backed expectations under *Penn Central*’s
17 second prong sufficient to defeat summary judgment. *Colony Cove Properties, LLC*, 888 F.3d
18 at 454.
19

20 **3. Character of Government Action**

21

22 A “taking” is more likely to occur “when the interference with property can be
23 characterized as a physical invasion by government than when interference arises from some
24 public program adjusting the benefits and burdens of economic life to promote the common
25 good.” *Id.*; *see also Penn Cent. Transp. Co.*, 438 U.S. at 125 (“[I]n instances in which a state
26 tribunal reasonably concluded that ‘the health, safety, morals, or general welfare’ would be
27 promoted by prohibiting particular contemplated uses of land,” the Supreme Court “has upheld
28 land-use regulations that destroyed or adversely affected recognized real property interests.”).

1
2 Here, Defendant has proffered admissible evidence showing that the restrictions on the
3 Subject Property were imposed by the County of Los Angeles because the property was
4 designated as an open space zone in a Significant Ecological Area. (Defendant's Exs. 7, 9, 10.)
5 Plaintiff has not rebutted that evidence or otherwise proffered any evidence to establish that the
6 government otherwise singled him out for a reason unrelated to the Subject Property. *Colony*
7 *Cove Properties, LLC*, 888 F.3d at 454-55. There is no genuine issue of material fact in this
8 case concerning the character of the government action at issue. *First Nat'l Bank of Ariz.*, 391
9 U.S. at 290.

10
11 As noted above, to defeat summary judgment, Plaintiff must direct the Court to specific,
12 triable facts supported by admissible evidence, and summary judgment cannot be avoided by
13 relying solely on conclusory allegations unsupported by factual data. *So. Cal. Gas Co.*, 336
14 F.3d at 889; *Arpin*, 261 F.3d at 922. After thoroughly examining the evidence submitted by
15 both sides, the Court concludes that Plaintiff's assertions that a constitutional taking occurred
16 do not establish disputed issues of material fact sufficient to preclude summary judgment.
17 Indeed, Plaintiff has failed to counter the law and evidence put forth by Defendant establishing
18 that no such taking occurred here. *Miller*, 454 F.3d at 987; *Celotex Corp.*, 477 U.S. at 322.

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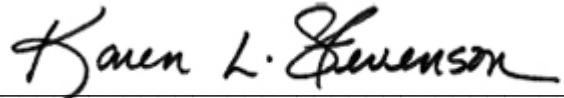
1 **CONCLUSION⁷**

2
3 For the reasons outlined above, the Court concludes that no material, genuine, or triable
4 issues of fact remain in this action and Defendant's Motion should be GRANTED in its
5 entirety.

6
7 **RECOMMENDATION**

8
9 IT IS THEREFORE RECOMMENDED that the District Court issue an Order: (1)
10 approving and accepting this Report and Recommendation; (2) GRANTING Defendant's
11 Motion for Summary Judgment in full; and (3) dismissing this action with prejudice.

12
13 DATED: May 15, 2024

14 

15 KAREN L. STEVENSON
16 CHIEF MAGISTRATE JUDGE
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25 ⁷ The Court rejects Defendant's argument that this action is barred by the relevant statute of limitations on the ground that
26 "[i]f anyone has ever suffered a taking, it was the developer, who in 1987 gave up the right to develop LOT 3 in TRACT
27 NO. 33128 (Subject Property) by the dedication of rights to the County." (Dkt. No. 82 at 23.) The referenced developer is
28 not a party to this case, and while Plaintiff is critical of the circumstances surrounding the 1987 dedication, there is no
allegation in the Complaint that the County of Los Angeles committed an unconstitutional taking that injured the owner of
the Subject Property in 1987.

NOTICE

Reports and Recommendations are not appealable to the Court of Appeals but may be subject to the right of any party to file objections as provided in the Local Rules Governing the Duties of Magistrate Judges and review by the District Judge whose initials appear in the docket number. No notice of appeal pursuant to the Federal Rules of Appellate Procedure should be filed until entry of the judgment of the District Court.